IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.698 OF 1995

Mahanagar Telephone Nigam Ltd. ...Plaintiff

V/s.

Shri.K.Balasubramaniam & Ors. ...Defendants

.....

Mrs.Jyoti Thakkar for Plaintiff.

None for Defendants.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 26, 2007.

P.C.

1. None appears for the Defendants. No written statement is filed. The Suit has been set down for hearing as undefended suit in terms of orders dated 10th January 2001 and 7th February 2001. As per order dated 8th November 2000, Suit is already dismissed as against Defendant No.2.

2. In substance, the claim of the Plaintiff is in relation to outstanding bill charges to be recovered from the Defendants 1, 2 and 3 in

relation to Telephone No.204-6619. Four bills are subject matter of the Suit dated 1st October 1993, 1st December 1993, 1st February 1994 and 3rd October 1994 respectively. The principal amount in respect of the said bills in aggregate comes to Rs.21,17,166/- (Rupees Twenty-one Lakhs Seventeen Thousand One Hundred Sixty-six Only). The Defendants are liable to pay interest at the rate of 18% p.a. which is the aggreed rate of interest for delayed payment.

3. Taking into account the period for which the telephone bills have remained unpaid, the Plaintiff has calculated interested on the outstanding bill which is aggregate Rs.4,13,142/- (Rupees Four Lakhs Thirteen Thousand One Hundred Forty-two Only). According to the Plaintiff, inspite of repeated reminders including the action of disconnection of the said telephone, as, the Defendants did not pay the outstanding amount, present Suit came to be filed on 28th December 1994 for the following reliefs:

"(a) That the defendants No.1, 2, and 3 individually jointly and severally be ordered and decreed to pay to the Plaintiffs the sum of Rs.25,30,308/-. Rs.Twenty Five Lakhs Thirty Thousand Three Hundred Eight Only. (Being the principal amount of Rs.21,17,166/-. Plus interest amount of Rs.4,13,142/-.).

(b) That further interest on the principal amount of Rs.21,17,166/-. at the rate of 18% p.a. or at any other such rate of interest as this Honourable Court may deem fit and proper from the date of filing of this suit till payments be provided for.

(c) That pending the hearing and final disposal of this suit the flat being known as Flat No.4 Dhanvijay Apartment, Opposite D.P.Road, Mulund East, Bombay 400 081 belonged to the defendant No.1 be attached by the interim order of this Honourable Court, till recovery of the payments.

(d) That pending the hearing and final disposal of this suit the defendant No.1, 2, and 3 their agents and servants be restrained by and ad-interim and interim orders from transferring and or parting with possession of the flat known as flat No.4, Dhanvijay Apartment, opposite D.P.Road, Mulund East Bombay 400 081 belonged to the defendants No.1 to and in favour of any person or persons.

(e) That ad-interim reliefs in terms of prayers ‘C’ and ‘D’ above be granted in favour of the plaintiffs.

(f) That the Court cost and the professional cost of this suit be granted.

(g) That such other and further reliefs as this Honourable Court may deem fit and proper be granted."

4. Although the Defendants have been duly served, none appears for the Defendants. No written statement has been filed on behalf of the Defendants. On the other hand, the Plaintiff has filed affidavit of evidence sworn by Chandrakant Sakharam Mahajan, Authorised Signatory of the Plaintiff. The said Affidavit reiterates the case made out by the Plaintiff in the Plaint. The evidence of Plaintiff's witness makes reference to the relevant bills and the outstanding amount payable by the Defendants including the legal notices issues to the Defendants on 14th December 1994.

5. The case made out in the Plaint is restated in the affidavit of evidence and substantiated on the basis of the original documents tendered on behalf of the Plaintiff, such as the copy of the relevant bills, the legal notice as well as the acknowledgement of service of legal notice on Defendant No.1.

6. The first question that needs to be addressed is: whether the Plaintiff has

established the case made out in the Plaint? I have no hesitation in accepting the claim of the Plaintiff having regard to the statement made in the affidavit of evidence which is supported by documentary evidence. It is obvious that the Defendants have no plausible explanation to offer, for which reason, they have not chosen to appear,. There is nothing on record which militates against the claim of the Plaintiff. On the other hand, on going through the affidavit of the Plaintiff's witness and the original documents, the claim of the Plaintiff will have to be accepted as it is.

7. In the circumstances, in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure, 1908, I am of the view that the Plaintiff is entitled for decree in terms of prayer clauses (a) and (b) as reproduced earlier.

8. Accordingly, Suit is decreed against Defendants 1 and 3 only in terms of prayer clauses (a) and (b) with cost. Decree be drawn up accordingly.

9. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.